

# CLARK HILL

Charles R. Spies  
T 202.572.8663  
F 202.572.8683  
Email: cspies@clarkhill.com

November 21, 2017

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

VIA FACSIMILE: (202) 219-3923

Re: **MUR 7292; Complaint Against Friends of Cliff Stearns**

Dear Mr. Jordan:

We are writing this letter on behalf of the Friends of Cliff Stearns ("Respondent" or "FCS") in response to the Complaint filed in the above-referenced matter by the liberal advocacy group Campaign Legal Center and Catherine Hinckley Kelley ("Complainants"). The Complainants erroneously suggest that former United States Representative Cliff Stearns used his campaign committee, FCS, to pay for a variety of expenses to further his lobbying career and subsidize his family, thereby converting campaign funds to personal use. As detailed herein, the Complaint alleges several immaterial and incorrect facts which fail to amount to violations of the Federal Election Campaign Act of 1971, as amended (the "Act") or Federal Election Commission ("Commission" or "FEC") regulations, and consequently this Complaint should be dismissed.

Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes. Such permissible purposes include "paying ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office," contributing to an organization exempt from federal taxation under 26 U.S.C. § 170(c), as well as "any other lawful purpose" as long as these funds are not converted to "personal use." 52 U.S.C. § 30114(a)(2), (3), (6), (b) *see also* 11 C.F.R. § 113.2(a), (b), 113.1(g)(2). Conversion to personal use occurs when funds in a campaign account are used to "fulfill any commitment, obligation or expense . . . that would exist irrespective of the candidate's election campaign or . . . duties as a holder of Federal office." 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

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**Analysis**

***Representative Stearns has not Used Campaign Funds to Further his Lobbying Career or Subsidize his Family***

Complainants allege FCS funds have been used to further Representative Stearns' lobbying career, pointing to \$4,118.95 paid to the National Republican Club of Capitol Hill ("Capitol Hill Club") as well as disbursements made to other federal officeholders who have "influence" over issues he lobbies on. (Complaint at ¶ 25). What Complainants maliciously fail to mention is that the Commission does not have jurisdiction over lobbying activity, so sensationalized reference to lobbying is not only irrelevant, but in fact is a sign post indicating the lack of a substantive allegation, much less anything worth the Commission's time to investigate.

Commission regulations permit campaign funds to be used for membership dues to an organization that has political interests. *See* 11 C.F.R. § 113.1(g)(1)(i)(G). The Capitol Hill Club is the premier Republican club in Washington, D.C., with current and former members including Presidents, Vice Presidents, Members of Congress, and other influential Republicans. For the last five years, FCS has paid \$2,099 for Representative Stearns' membership dues. Food and beverage expenses were also included with each invoice totaling \$2,019.95. The invoices were paid in full by FCS each month, without distinguishing between meals and membership expenses.

Before Representative Stearns received this Complaint, he inquired with Commission staff to determine whether FCS is permitted to pay for his membership and a Commission employee confirmed that such dues payment would not constitute personal use. Based upon this due diligence, he paid for his Capitol Hill Club bill with FCS funds. When he became aware, through publicity surrounding this complaint, that meals at the Club might be treated differently than membership dues, he took the cautious approach of reimbursing FCS \$2,019.95 for the cost of meals charged. Because FCS' payment of Representative Stearns' membership dues to the Capitol Hill Club does not constitute personal use, and in an abundance of caution he has already taken action to reimburse FCS, there is no reason for the Commission to expend valuable resources on a *de minimis* amount spent by FCS, but now reimbursed. This is not worthy of the Commission's time and resources.

The Complainants also take issue with the disbursements made to Members of Congress, which they argue existed irrespective of Representative Stearns' former duties as a federal officeholder. (Complaint at n. 58). This is the wrong analysis to apply. In fact, contributing excess campaign funds to support the campaigns of other federal candidates is lawful and common practice. As a former officeholder, Representative Stearns regularly attends and speaks at political events and fundraisers in support of Republicans. He is still highly involved with electing Republicans and has not ruled out the prospect of running for federal office again.

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FCS may legally transfer unlimited amounts of money to a national, State, or local party committee, and could also transfer funds to a state or local candidate. 52 U.S.C. § (a)(4), (5); 11 C.F.R. § 113.2(c), (d). Contributions of up to \$1,000 to other federal candidates and officeholders are common practice for campaign committees. The purpose is the same—supporting Republican candidates and officeholders. Complainants also fail to provide additional relevant facts that prove that these funds are not being converted to personal use. FCS not only contributed to the four officeholders Complainants claim have influence over Representative Stearns' lobbying issues, but FCS has contributed to committees such as Marco Rubio for President, Carlos Lopez-Cantera for Senate, Salmon for Congress, and Virginia Foxx for Congress. Complainants chose not mention these disbursements because they do not add any sensational value to their story. Even assuming arguendo that Complainants are correct, and Representative Stearns was indeed trying to further his own lobbying career, there is no legal significance to that motivation and/or jurisdiction for the Commission under the Act. In reality, as a respected Member of the U.S. House of Representatives for 24 years, Representative Stearns does not need to garner support of his former colleagues by making small donations to federal officeholders.

The Complainants next allege that certain disbursements “appear to be a means of subsidizing Stearns and his family.” (Complaint at ¶ 26). Appearances can be deceiving, especially when interpreted by a hostile organization such as Campaign Legal Center that generates its budget by ginning up accusations of corruption and FEC violations. This Complaint points to a disbursement of \$5,180 for Representative Stearns' cellphone bills and payments to Representative Stearns' wife totaling \$5,000 for “Administrative Support.” First, the cellphone bill pays for a Verizon hotspot and a campaign cellphone because the hotspot cannot be utilized unless there is a cellphone account connected. The campaign utilizes this Internet connection to file Commission reports, and conduct other compliance tasks necessary for a committee with over \$1.6 million in its bank account. Representative Stearns possesses two cellphones—he has a personal cellphone and a campaign phone. Contrary to what the Complainants suggest, no one in the Stearns family is being subsidized by the cellphone and hotspot. However, in an abundance of caution, Representative Stearns has reimbursed FCS \$5,180 for the Verizon bill, so this is a non-issue.

Second, Joan Stearns is not just Representative Stearns' wife, but also the Treasurer of FCS. After handling the professional services of preparing and filing FEC reports for FCS, tax filings, managing mail correspondence, and responding to requests for charitable contributions for four and a half years, FCS decided that Joan should be compensated for her time. In June of 2017, FCS executed a contract agreeing to pay Joan \$1,000 per month in return for her professional services to the committee. The Commission explicitly authorizes excess campaign funds to be used to pay the costs incurred for “staff, headquarters, and supplies in order to file Federal Election Commission reports.” Advisory Opinion 1976-101 (Heise) at 2. Paying Mrs. Stearns \$1,000 a month in return for her services is not only below the market rate for such services, but is in fact fiscally responsible since commercial filing software alone can cost close to \$1,000 a month, and many consultants charge over \$5,000 per month for accounting and compliance services. Complainants take issue with Joan not receiving payment until June 2017, but her willingness to initially volunteer her services has no legal significance regarding her

current fair market value contract for professional services. Due to ongoing FCS activity, the large amount of cash on hand, and the existence of a written fair market value contract, there is no evidence suggesting that this \$1,000 monthly payment was not a legitimate campaign expenditure.

***Friends of Cliff Stearns has Donated Thousands of Dollars to Non-Profit Organizations***

Complainants allege that Respondent has made disbursements for expenses that existed irrespective of Representative Stearns' duty as a federal officeholder. (Complaint at ¶ 27). These expenses include payments to Awakening, Inc. ("Awakening") for conference fees and related expenses, disbursements for "Framing Services," a book appraisal, and "books/gifts." None of these disbursements were made for personal uses. Awakening is a 501(c)(3) non-profit organization, which advances conservative values and principles. The Commission explicitly allows excess campaign funds to be contributed to any organization which is exempt from federal taxation under 26 U.S.C. § 170(c) "unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit. 11 C.F.R. § 113.1(g)(2). Representative Stearns was not personally compensated by the disbursements to Awakening. The only benefit he received was the ability to attend the conferences, and any meals consumed at the conference were eaten with other attendees during one of the scheduled sessions. Representative Stearns has been involved with Awakening for decades and gave the keynote address in 1990. Because Awakening is a 501(c)(3) and Representative Stearns did not receive any compensation for the disbursements to the organization, the funds were not converted to personal use.

The disbursement of \$1,093.51 that Complainants point out was spent to frame a picture of the U.S. Capitol Building, photographed by the campaign committee. This piece of art, along with other artifacts, including but not limited to Representative Stearns' desk, rug, and flags were donated to the College of Central Florida where the Clifford B. Stearns collection is housed. This disbursement benefited the college, and therefore is a permissible use of the campaign funds under 11 C.F.R. § 113.2(b). The \$340 spent on a book appraisal was used to appraise the value of \$13,245 worth of books, which were donated to the Friends of the Ocala Public Library, another non-profit entity. The \$1,469.42 spent on "Books/gifts" also was consistent with Commission regulations. Representative Stearns authored a book detailing his time in office and FCS paid the publishing company for several copies with the intention of gifting the books to FCS supporters. To Representative Stearns' dismay, when he received the printed copies there were too many grammatical and typographical errors to do anything with the books besides give them to charity. Therefore, Representative Stearns donated these books to Goodwill Industries-Suncoast, Inc. Representative Stearns did not receive royalties on the books purchased, so the funds used to purchase the books were not converted to personal use, and in fact Representative Stearns personally lost thousands of dollars on this venture.

***Sending Holiday Cards to Supporters is a Permissible Use of Campaign Funds***

The \$380.14 expended on holiday cards sent to Representative Stearns' supporters from his time in office was also a permissible use of campaign funds. "Gifts of nominal value and

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donations of a nominal amount made on a special occasion such as a holiday . . . are not personal use, unless made to a member of the candidate's family." 11 C.F.R. § 113.1(g)(4). These cards were sent to individuals who supported Representative Stearns to wish them happy holidays. Therefore, they would not have been sent irrespective of his former position and are clearly permitted under Commission regulations as a holiday gift. As noted previously, Representative Stearns has kept an open mind in regard to running for office, therefore it is reasonable for FCS to send holiday cards in order to garner and sustain support.

***Paying for the Storage Unit is an Ordinary and Necessary Campaign Expense***

Complainants allege that Representative Stearns has converted campaign funds to personal use by storing items related to his campaign and time in federal office "far longer than the Commission has ever permitted." (Complaint at ¶ 29). The advisory opinions referenced by Complainants can be distinguished from Representative Stearns' situation, therefore maintaining this moderately priced storage unit should be considered an ordinary and necessary expense incurred with Representative Stearns' duties as a holder of federal office. 52 U.S.C. § 30114(a)(2). Unlike the advisory opinions cited by Complainants, FCS is not paying to temporarily store the Stearns family's furnishings while they move back to their home state, and Representative Stearns is not necessarily winding down his campaign. See Advisory Opinion 2010-26 (Baird) at 2; Advisory Opinion 2013-05 (Gallegly) at 2. In the worst case analysis, the Commission would need to provide FCS a date on which it will "review the facts and circumstances pertaining to committee activity . . . in order to consider whether further disbursements for similar purposes are permitted." Advisory Opinion 1993-6 (Panetta) at 6.

***Respondent's Failure to Itemize Disbursements is a De Minimis Issue***

Complainants allege that Respondent failed to itemize payments of \$1,850 and \$396.45 for "Expenses." The \$1,850 disbursement for "Card Services" was paid to PayPal in order to attend an Awakening conference, however, the FEC report should have listed this as a contribution to Awakening. The \$396.45 disbursement was for two items. The first was for \$166 for the campaign Post Office Box and the other expense of \$230.45 was spent on lodging when Representative Stearns traveled to present a \$2,500 check to Fishweir Elementary School, a public school located in Jacksonville, Florida. The Post Office Box payment was permissible as an "ordinary and necessary expense" since the campaign still receives mail related to tax filings, potential speaking engagements, and charitable contributions. 52 U.S.C. § 30114(a)(2). The contribution to Awakening and costs associated with the contribution to Fishweir Elementary School were acceptable as contributions to "organization[s] described in section 170(c) of Title 26." 52 U.S.C. § 30114(a)(3). Though FCS arguably should have itemized these expenses, the amount is *de minimis* and the underlying disbursements were entirely permissible under the Act and Commission regulations. The Commission routinely chooses not to prosecute such *de minimis* errors and should do so in this case.

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**Conclusion**

For the foregoing reasons, the Commission should find that there is no reason to believe that Respondent violated the Act, or regulations thereunder, and this matter should be promptly dismissed. This is the exact sort of trivial complaint that the Commission should use its prosecutorial discretion to dismiss, because the amounts in question are *de minimis* and Representative Stearns has already taken measures to correct any even arguable mistakes that may have been made.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



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Charles R. Spies  
Sloane M. Skinner

CLARK HILL PLC

*Counsel to Respondent Friends of Cliff Stearns*

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